IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 65 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

BAVLA GOPALAK VIVIDH KARYAKARISAHAKARI MANDLI LIMITED

Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 07/09/2000

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

In this reference made under sec. 256(1) of the Income-tax Act, 1961, arising out of the order of the Tribunal in favour of the assessee for the Assessment Year 1974-75, at the instance of the department, the following two questions of law arise for decision of this Court :

"1 Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been right in law in holding that the amount of Rs. 5,69,777/- could not be taxed as income during the accounting period relevant to the assessment year in question since the dispute regarding subsidy was not yet decided?

2. Whether the view of the Appellate Tribunal that till the final decision on the dispute regarding subsidy is reached, it cannot be said that income has accrued to the assessee and it can be taxed only in the year of accrual when the issue is decided or settled and amount received by the assessee is correct in law?"

2. The two questions are virtually interconnected and common answer can be given.

3. The facts giving rise to this reference are as under :

3.1 The Government had passed a resolution on 20th October 1972 wherein it was decided that on account of drought and famine there was scarcity of fodder for the cattle and, therefore, in order to save the cattle in the affected areas, the Government started various relief schemes. Under one of the schemes, fodder was to be provided to the cattle by the Government itself or by some other agencies. If the Wada was run by other agencies, the Government agreed to pay 75 ps. per cattle per day subject to certain conditions to be fulfilled by that agency. This payment was in the nature of a subsidy to be made subject to the conditions prescribed by the Government and to be fulfilled by the agency.

3.2 The assessee, on the basis of the scheme, got 54 Wadas registered and claimed subsidy in the sum of Rs. 5,69,777/-. The Government did not pay the subsidy on the ground that the Wadas were not maintained by the assessee in accordance with the scheme. The assessee

was, therefore, required to file a civil suit praying for grant of decree towards subsidy in the sum of Rs. 5,69,777. The Civil Court decreed the suit, but an appeal preferred by the Government is pending in the High Court.

4. The question that arose before the Assessing Officer was whether the Assessee is liable to pay income-tax on the amount in question in the Assessment Year under consideration. The Assessing Officer brought the income to tax. The assessee preferred an appeal to the Commissioner of Income-tax (Appeals), who confirmed the order of the Assessment Officer by recording his conclusion thus :

> "I am of the view that the sum of Rs. 5,69,777 being the amount of the subsidy for which the bills had been submitted by the appellant to the Government had become due to the appellant in the previous year relevant to the assessment year under consideration itself. It is not that the appellant has credited this amount in its accounts without any basis."

5. The assessee then carried the mater to the Income Tax Appellate Tribunal. The Tribunal relied on a decision of the Bombay High Court reported in 106 ITR 473 and held that "till the final decision on the dispute regarding subsidy is reached, it cannot be said that the income has accrued to the assessee in the year under consideration. Income cannot be accrued unless the dispute is finally decided or amicably settled by both the parties and it can be taxed only in the year of accrual when the issue is decided or settled and amount received by the assessee."

6. After hearing the learned counsel appearing for the revenue, we find that the view taken by the Tribunal, relying on a decision of the Bombay High Court, has full support from the decision of the Supreme Court in the case of CIT, West Bengal-II v. Hindustan Housing and Land Development Trust Ltd., (1986) 161 ITR 524. There, on a disputable amount of enhanced compensation payable in land acquisition proceedings, the question arose as to when the income can be said to have accrued by award of compensation. The decision of the High Court of Calcutta was affirmed by the Supreme Court by saying that

> "although the award was made by the arbitrator on July 29, 1955, enhancing the amount of compensation payable to the respondent, the

> entire amount was in dispute in the appeal filed by the State Government. And the dispute was regarded by the court as real and substantial because the respondent was not permitted to withdraw the amount deposited by the State Government without furnishing a security bond for refunding the amount in the event of the appeal being allowed. There was no absolute right to receive the amount at that stage. If the appeal were allowed in its entirety, the right to payment of enhanced compensation would have fallen together. The extra amount of compensation of Rs. 7,24,914 was not income arising or accruing to the respondent during the previous year relevant to the assessment year 1956-57."

7. The case of the present assessee is on a stronger foundation based on the facts which we have gathered from various orders placed before us that although a decree was passed by the civil court for the amount of subsidy, the assessee did not receive the payment of subsidy under the scheme and the grant of subsidy was a subject-matter of dispute in the pending appeal. This is not a case where the income had actually accrued to the assessee and the mere fact that he has credited the said amount in his account books, therefore, is not decisive.

8. To conclude, therefore, we answer the two questions referred to us in favour of the assessee and against the revenue.

In the circumstances, however, we make no order as to costs.

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(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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